a superior and try to persuade him to decide differently but that is in no sense an appeal.

I think that when the legislature conferred these powers they were mindful of the position in England with respect to analogous powers and that they intended to create a similar position here.

I do not think that it makes any difference as a matter of construction of the Ordinance whether the powers are conferred on a holder of an office or on a body of persons whether incorporated or not.

Reliance was placed by Mr. Shanks on the recent Ceylon case of *Nakkuda Ali v. Jayaratne*[1]. I distinguish that case because it turned on the construction of legislation in very different terms. The Judicial Committee did not attempt to upset the very large body of case law which decides that *certiorari* lies in respect of powers created in other terms. I decide, therefore, that the act in question is one with respect to which *certiorari* lies.

That brings me to the second point whether the order asked for should be granted in this case. The general position is that if *certiorari* lies it should be granted *ex debito justitiæ* to a person aggrieved. The proposition is subject to the exception that where a right of appeal lies that right should be exhausted first except where such act was done without jurisdiction. In a fairly modern instance that was applied in an income tax case to a series of cases where an appeal lay not a Court but to an *ad hoc* body, to wit, the General Commissioners of Income Tax, (*R. v. Inspector of Taxes for Parish of Kingsland*[2]). I consider that I should follow that authority and the application should be refused. With costs agreed at $400/- to be paid by applicants.

Application refused.

MOHAMED KUNJU v. ABDUL SAMEED AND ANOTHER

[Orig. Civ. Juris. (Brown, J.) March 8, 1951]

[Singapore — Civil Suit No. 333 of 1949]

Trust — Resulting Trust — Limitation — Trust for a specific purpose — Limitation Ordinance.

The plaintiff in this case applied for a declaration that premises held in the name of P. Hameed (deceased) were held in trust for him.

The plaintiff's case was that as the arrangements for the agreement of tenancy had been made by the plaintiff and the name of P. Hameed had only been inserted by reason of the fact that the plaintiff was unable himself to enter into the agreement, P. Hameed and now his administrators, held the property in trust for him. On this point the plaintiff virtually based his case on **Dyer** v. **Dyer**[1] alleging that the rents were paid by the plaintiff and the property built by him.

The answer of the defendants to this point was that firstly, it was a personal agreement between the Harbour Board and P. Hameed and being a personal agreement, could not be challenged and secondly, that no resulting trust could arise as there was no purchase from which anything could be said to give rise to a resulting trust; thirdly apart from the above, the defendants brought four legal defences: — (a) That the principle of **Gascoigne** v. **Gascoigne**[2] applied in that although the Board's employees might well have been a party to the deception of permitting P. Hameed's name to be used in the agreement while in fact the intention was that the plaintiff should be the tenant, yet the employees could not bind the Board and that as this act was done to get round a Bye-law that the doctrine of **Gascoigne** v. **Gascoigne** applies; (b) that the Statute of Limitation barred the claim; (c) that the doctrine of laches applied as the plaintiff had waited for P. Hameed to die before bringing an action for a declaration and as P. Hameed was the only person who could have given contrary evidence to the plaintiff's that the position of the defendants had been embarrassed by the delay and that therefore the doctrine was brought into effect.

The defendants' answer to these points was that where **Gascoigne** v. **Gascoigne** is sought to be applied it is necessary to positively prove the prohibition and that this had not been done in this case. Secondly, as to limitation, that the Statute of Limitations would only run from the time when there was a breach of duty or a denial of right. Thirdly as to laches, the plaintiff's answer was that for such a defence to succeed, neglect must be proved positively.

Held, (1) that there was a resulting trust of the premises in favour of the plaintiff; (2) that there was nothing fraudulent in the use of the name of P. Hameed for the tenancy by the plaintiff as in this case the purpose of such a bye-law was only to protect the domestic interest of the Harbour Board, the principle of **Gascoigne** v. **Gascoigne** did not apply; (3) that the trust in this case was not for a specific purpose and therefore fell within the scope of Section 9 of the Limitations Ordinance; (4) that the time from which limitation ran in this case was from the date when the plaintiff's position was first challenged and as this was less than six years ago in this case, the suit was not statute barred.

Cases referred to:—

(1) *Dyer v. Dyer* 30 E.R. 42.
(2) *Gascoigne v. Gascoigne* (1918) 1 K.B. 228.
(3) *Cottington v. Fletcher* 26 E.R. 498.
(4) *Khaw Sim Tek v. Chuah Hooi Gnoh Neoh* (1922) 1 A.C. at p. 126.
(5) *C. Kasivisvanathan Chettiar v. C. V. S. Chokalingham Chettiar* (1935) A.C. 163.
(6) *Lau Tai Thye v. Leong Yin Khean* (1934) M.L.J. 110.
(7) *Soar v. Ashwell* (1893) 2 Q.B. 390.
(8) *Re Clay* (1919) 1 Ch. 66.

ACTION.

D. H. Murphy for the plantiff.

M. B. Brash for the defendants.

The facts sufficiently appear from the judgment.

Cur. Adv. Vult.

Brown, J. : — This is a claim against the estate of a deceased person. P. Hameed being dead, the

main evidence which might have contradicted the plaintiff's story is not available, and for this reason it has been necessary to examine the plaintiff's evidence with particular care. Bearing this in mind, my observation of the plaintiff and his witnesses and my examination of their evidence lead me to believe their story and I find the facts as follows :—

(1) In 1917 the plaintiff negotiated with the Singapore Harbour Board for the lease of certain premises which are now known as 193 Keppel Road.

(2) These negotiations resulted in a tenancy agreement dated 16th October 1917 in the names of the Singapore Harbour Board and P. Hameed, who was the plaintiff's younger brother then aged 18.

(3) The reason for making P. Hameed the other party to the Agreement was that the representatives of the Singapore Harbour Board would not allow the premises to be let to the plaintiff in his own name because he was then a labourer employed by a contractor who was working on a contract for the Singapore Harbour Board, and it was at their suggestion that the tenancy agreement was in the name of P. Hameed.

(4) The plaintiff paid the rent and erected upon the premises the building now known as 193 Keppel Road and has carried on various businesses upon the premises.

(5) P. Hameed was no more than the nominee of the plaintiff to enable the plaintiff to obtain the tenancy, and no money was paid by P. Hameed either by way of rent under the tenancy agreement or for the erection of the building.

(6) At the end of the year 1946 P. Hameed and Mohamed Kassim took over the management of the plaintiff's business prior to the plaintiff's departure for India in January 1947.

(7) P. Hameed died in December 1948, having at no time obtained any proprietary rights in the business or the building or the premises.

The plaintiff's claim is founded on breach of trust and is (inter alia) for a declaration that the premises now vested in the defendants are held by them in trust for him. It is contended on behalf of the defendants that upon the facts no trust was created and that this action is misconceived. The plaintiff relies upon the principle that where a person provides the money to acquire an interest in land in the name of a third person, a trust results to him. The passage setting out the principle which is quoted in all the text-books is the following passage from the Judgment of Eyre C.B. in *Dyer v. Dyer*[1] :—

> **Snell's Equity: 23rd Ed. 125.** "The clear result of all the cases, without a single exception, is, that the trust of a legal estate, whether freehold, copyhold, or leasehold; whether taken in the names of the purchasers and others jointly, or in the names of others without that of the purchaser; whether in one name or several; whether jointly or successive, results to the man who advances the purchase-money. This is a general proposition supported by all the cases, and there is nothing to contradict it; and it goes on a strict analogy to the rule of the common law, that where a feoffment is made without consideration, the use results to the feoffor."

Mr. Brash agrees that if in this case the transaction had been a conveyance, or a lease in which a premium was payable, a resulting trust would have arisen in favour of the plaintiff upon his paying the purchase-money or the premium. But he contends that no resulting trust arises upon the payment of rent under a tenancy agreement, as is the case here, particularly as no instalment of the rent was actually paid over at the time when the agreement was signed. It seems to me that such a distinction as he seeks to draw is artificial. The law raises a resulting trust in favour of the person who has paid for an interest in land, in order that he may not be deprived of the interest for which he has paid by the fact that it is in the name of a third person. And whether the interest which has been so obtained is a freehold or a lease for a term of years or (as in this case) a tenancy for the period of one year at a monthly rent, determinable on six months notice at any time after the expiration of the period, the principle and the necessity for it seem to me to be the same. I think the transaction which took place in 1947 resulted in P. Hameed holding the legal interest comprised in the tenancy agreement in trust for the plaintiff.

Next the defendants contend that the plaintiff cannot obtain the relief which he claims because the arrangement whereby he acquired the tenancy by using the name of P. Hameed was a subterfuge to avoid the rules or regulations or bye-laws of the Singapore Harbour Board. He says that it was therefore a fraud to which both the plaintiff and the servants of the Singapore Harbour Board were parties, which brings the case within the principle of *Gascoigne v. Gascoigne*[2]. No rule, regulation or bye-law prohibiting such a transaction has been put in evidence, although Mr. Nicholson, who in 1917 was an employee of the Singapore Harbour Board and examined the plaintiff's plans, stated in evidence : "we could not grant him a lease because he was an employee; it was against the Harbour Board Bye-laws." I quite accept that it was

an understood rule that the Singapore Harbour should not enter into any such transaction as the letting of premises to an employee or to a person who was under contract with the Singapore Harbour Board. The plaintiff was a labourer employed by a contractor and was considered to fall within the rule. I do not think it matters whether the rule was drawn up in writing in any code of Regulations or Bye-laws or whether it was an unwritten convention which was commonly understood and accepted. I see a distinction between the facts in this case and the facts in *Gascoigne v. Gascoigne*. In *Gascoigne v. Gascoigne* the plaintiff admitted that he had had the lease drawn up in his wife's name in order to defraud his creditors. In *Cottington v. Fletcher*[3] the plaintiff assigned an advowson to one of the defendants in order to evade certain statutes which made the advowson liable to forfeiture upon the ground that the plaintiff was a Papist. In the one case the object was to deprive the creditors of their legal rights. In the other the objects was to defeat the provisions of the statutes which formed part of the law of the land. But the rule or regulation or bye-law or unwritten understanding (or whatever it was) which is under consideration here was designed for the protection of the interests of the Singapore Harbour Board and of the public which the Board served. If it was a bye-law there is no evidence that it required the approval of the legislature or was part of the law of the land, or that any prosecution or other sanction of a public character would lie for its breach. And its purpose being to protect what I may describe as the domestic interests of the Board I can see nothing fraudulent in finding a way round it in a case where those interests were in no way threatened.

But the main defence which is raised is that, if this is a trust, the cause of action is statute-barred. If this trust was a trust for a "specific purpose" section 9 of the Limitation Ordinance would protect it from being statute-barred. Lord Buckmaster, in the case or *Khaw Sim Tek v. Chuah Hooi Gnoh Neoh*[4] said that a "specific purpose" must be a purpose that is either actually or specifically defined in the terms of the will or the settlement itself, or a purpose which, from the specific terms, can be certainly affirmed. The case would appear to lend support to the view that there must be a written instrument containing words which specify the purpose or from which the purpose can be implied, and that where there is no written instrument there can be no specific purpose. This view, however, was negatived in the case of *C. Kasivisvanathan Chettiar v. C. V. S. Chokalingham Chettiar*[5], where the attorney of an administrator of an intestate estate, who had obtained the transfer of property to himself knowing that it belonged to the estate, was considered to hold the property in trust for a "specific purpose." But I think that that case can be distinguished from the present case because there the attorney was acting in a fiduciary capacity and he obtained the property for the specific purpose of dealing with it as an asset of the estate in the course of his duties as administrator. The fact that in the present case the trust arose by operation of law and resulted from the circumstances of the transaction does not prevent it from falling within the ambit of section 9 of the Limitation Ordinance. (*Lau Tai Thye v. Leong Yin Khean*[6]). But if this resulting trust could be said to be a trust for "a specific purpose" it is difficult to think of any trust which could not be said to be constituted for a specific purpose. I hold that this trust does not fall within the scope of section 9.

Now, alhough this trust is not protected by section 9 of the Limitation Ordinance, I have to consider, in the light of the decision in *Soar v. Ashwell*[7] whether P. Hameed ought to be considered as having assumed the liabilities of an express trustee even though the trust is not an express trust. In general, an express trustee cannot plead the Limitation Ordinance, and a constructive trustee can. In the case of a resulting trust it has to be determined from the facts whether the trust has to be treated as falling within the former class (in respect of which the Limitation Ordinance cannot be pleaded) or as coming within the latter class (in respect of which it can). I hold that this trust does not fall within the former class because P. Hameed did not stand in a fiduciary relation to the plaintiff and was in fact no more than a cipher in the transaction.

This then is a suit, which is subject to the Limitation Ordinance, for which no period of limitation is provided except by Article 97 of the Schedule. It is barred within six years from the date when the right to sue accrued. The question which I have to determine is whether the time commenced to run from 1917 when the trust arose as a result of the transaction or from the date when a breach of trust was first committed, less than six years ago.

Mr. Brash contends that the plaintiff could have claimed a declaration of trust in 1917. Therefore, he says, the period of limitation runs from then. But whether the plaintiff could have successfully claimed a declaration then is at least open to doubt. Order 26 Rule 5 provides that "no action or proceeding shall be open to objection on the ground that a merely declaratory judgement or order is sought thereby, and the Court may make binding declarations of right,

whether any consequential relief is or could be claimed or not." But this power is purely discretionary, and the Court is not bound to make the declaration except in a proper case. *Re Clay*[8] is authority for saying that a declaration will not be made for a mere legal right without consequential relief. Duke, L.J. at page 79 draws attention "to the grave prospect there is if any citizen who possibly supposes he may have litigation at some future time against him is to be entitled to safeguard himself and set this affairs right by making his supposititious antagonist the defendant to an action." I am satisfied that in the present case no such possible future litigation was in the mind of the plaintiff and that it never occurred to him to institute proceedings, either in 1917 or at any time until a breach was committed. His attitude is shewn by the following passage from his evidence :—

"I never, before P. Hameed's death, asked him to put anything in writing declaring the trust. There was no necessity, because I am the head of the family and every member of the family knew that I had used his name."

I believe that passage accurately represents the position as it was understood by all concerned, and that never at any time prior to 1946 would any member of the family have suggested that the premises and business did not belong to the plaintiff. That being so, I can see no reason for instituting proceedings in order to obtain a declaration of a trust which had never been challenged, and I hold that the period of limitation runs from the date when the plaintiff's position was first challenged by an act committed in breach of trust. This act having been committed less than six years ago, the suit is not statute barred.

There remains to consider two further points which the defendants have raised. Firstly it is said that the suit is barred by laches because the plaintiff has delayed instituting proceedings until after P. Hameed's death, so that the evidence which P. Hameed might have given is not now available. But in order to substantiate the defence of laches some neglect on the part of the plaintiff must be shewn. I can see none here, and no neglect was suggested. Secondly, I am told that if I make the order asked for I shall be making an unenforceable order. I confess to some difficutly in understanding what is meant by that. My order will declare that the rights under the tenancy agreement are held by the defendants in trust for the plaintiff. The Singapore Harbour Board may, if they think fit, take steps to terminate the tenancy. They may, if they think fit, make a new tenancy agreement in the plaintiff's name. But so long as this tenancy agreement lasts the defendants will hold the tenancy in trust for the plaintiff and in their capacity as trustees can enforce the rights which the tenancy agreement accords.

There must be judgment for the plaintiff for the declaration asked for in items (a) and (c) of para. 15 of the Statement of Claim and I order that accounts be taken as asked for in items (d) and (e). No order for damages. The plaintiff to have the costs of the action.

Judgment for the plaintiff.

In re SHAIK RAMZAN BIN ABDULLAH BASARAWI, DECEASED.

[Orig. Civ. Juris. (Murray-Aynsley, C.J.) March 22, 1951]

[Singapore — Originating Summons No. 272 of 1950]

Trustees — Trustees appointed by consent of beneficiaries by Japanese Court — Order of Appointment set aside — Trustees remuneration for services rendered and expenses incurred — Japanese Judgment and Civil Proceedings Ordinance, 1946.

During the Japanese occupation the Estate & Trust Agencies (1927), Limited was by the consent of all the beneficiaries appointed by the Order of the Japanese Court sole trustees of the estate of the deceased in place of the defendant who was serving a prison sentence. This Japanese Order was subsequently set aside in 1950 by virtue of section 3 of the Japanese Judgments and Civil Proceedings Ordinance 1946. The Company had managed and administered the affairs of the estate up to the date when the Japanese Order was set aside.

The question arose as to whether the Company was entitled to any remuneration for the services rendered to the estate of the deceased prior to the setting aside of the Japanese Order.

Held, that because the beneficiaries of the estate have benefited from the work done by the Company, this created an obligation to pay a reasonable remuneration for the services rendered and they be indemnified against expenses incurred by them.

Observations regarding validity of Japanese Judgments.

ORIGINATING SUMMONS.

N. L. Macassey for the defendant.

Eric Choa for The Estate & Trust Agencies (1927) Ltd.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Murray-Aynsley, C.J. : —In the course of the proceedings resulting from this Summons it became necessary to consider the position of the applicants, the Estate and Trust Agencies (1927), Ltd. They were appointed trustees by a decree of the Japanese Court that functioned in the city during the occupation period. The previous trustee had been convicted and sentenced by a Japanese Criminal Court. His removal